## **CCRB INVESTIGATIVE RECOMMENDATION**

Investigator:		Team:	CCRB Case #:	<b>▼</b> Force	✓ Discourt.	U.S.	
Sophia Manuel		Squad #16	201406706	✓ Abuse	O.L.	☑ Injury	
Incident Date(s)	dent Date(s) Location		ion of Incident:		18 Mo. SOL	EO SOL	
Thursday, 07/03/2014 2:40 AM		1750 Sedgwick Aven	dgwick Avenue		1/3/2016	1/3/2016	
Date/Time CV Reported	CV Reported At: How CV Reported		How CV Reported	d: Date/Tim	Date/Time Received at CCRB		
Mon, 07/07/2014 8:34 AM		CCRB	CRB Call Processing System		Mon, 07/07/2014 8:34 AM		
Complainant/Victim	Type	Home Add	ress				
Witness(es)		Home Add	ress				
Subject Officer(s)	Shield	TaxID	Command				
1. POF Tatiana Cruz	00400	950253	046 PCT				
2. POM Daniel Madden	07841	950796	046 PCT				
Officer(s)	Allegatio	n		Inv	estigator Recor	nmendation	
A.POF Tatiana Cruz	Discourte	esy: PO Tatiana Cruz s and <sup>§ 87(2)(b)</sup>	spoke rudely to § 87(2)(	b)			
B.POF Tatiana Cruz		O Tatiana Cruz arreste	ed <sup>§ 87(2)(b)</sup>				
C.POF Tatiana Cruz	Abuse: Po	O Tatiana Cruz arreste	ed § 87(2)(b)				
D.POF Tatiana Cruz	Force: PO Tatiana Cruz used physical force against \$87(2)(b)						
E.POM Daniel Madden	Force: PC § 87(2)(b)	Daniel Madden used	physical force again	nst			
F.POF Tatiana Cruz	Force: PC	Tatiana Cruz struck	§ 87(2)(b)	with her			
G.POF Tatiana Cruz		Tatiana Cruz struck	§ 87(2)(b)	with an			
H.POF Tatiana Cruz	_	O Tatiana Cruz search	ed § 87(2)(b)	cell			
I.POF Tatiana Cruz	Force: PC	O Tatiana Cruz used a	chokehold against § 8	7(2)(b)			
J.POF Tatiana Cruz	Force: PC § 87(2)(b)	Tatiana Cruz used po and § 87(2)(b	epper spray against				

### **Case Summary**

On July 3, 2014, at approximately 2:40 a.m., PO Tatiana Cruz and PO Daniel Madden of the 46 <sup>th</sup>
Precinct pulled over \$87(2)(b) and \$87(2)(b) in front of 1750 Sedgwick
Avenue in the Bronx because §87(2)(b) was allegedly driving without a seatbelt. PO Cruz
allegedly spoke rudely to \$87(2)(b) and \$87(2)(b) (Allegation A). PO Cruz and PO Madden
allegedly observed a gravity knife in the car. PO Cruz decided to arrest \$87(2)(b) and \$87(2)(b)
knife (Allegations B and C). PO Cruz removed knife
from his car and frisked and searched him. PO Cruz bit \$87(2)(b) s right arm
because he allegedly tugged at her firearm (Allegation D). PO Madden punched § 87(2)(b)
(Allegation E). PO Cruz allegedly struck §87(2)(b) with handcuffs (Allegation F).
s 87(2)(b) exited the car and videotaped the officers. The officers handcuffed s 87(2)(b) and
placed him in the police van. PO Cruz allegedly struck \$87(2)(b) s left wrist with an asp,
breaking his watch. She also allegedly struck him about the body with her asp (Allegation G). PO
Cruz allegedly took § 87(2)(b) s phone and deleted the video (Allegation H). § 87(2)(b)
complied with instructions to get on the ground, where PO Cruz handcuffed him. She then
allegedly picked him up by his sweatshirt, choking him, before placing him in the van
(Allegation I). PO Cruz pepper sprayed $\$87(2)(6)$ and $\$87(2)(6)$ in the van (Allegation J).
They were transported to the 46 <sup>th</sup> Precinct stationhouse, where they were each released with a
desk appearance ticket for criminal possession of a weapon in the fourth degree. §87(2)(b) also
received a summons for a seatbelt violation (arrest reports encl. 49-54; summons encl. 15;
complaint encl. 6-8). A witness, \$87(2)(b) provided a video which is extremely dark and
distant and which does not capture any sounds or images of the incident. § 87(2)(b) and and
visited 87(2)(b) , where they were treated for bruising, swelling,
concussion, and pepper spray exposure (encl. Privileged Folder).

This case was originally assigned to Inv. Alexander Schiavo. It was reassigned to Inv. Cassandra Fenkel on November 18, 2014, after Inv. Schiavo was promoted to Assistant Supervisor of Investigations. The case was reassigned to Inv. Benjamin Gilmore on December 29, 2014. After Inv. Gilmore was promoted to APU Investigator, the case was reassigned to Inv. Sophia Manuel on March 13, 2015.

### **Mediation, Civil and Criminal Histories**

This case was not elig	gible for mediation. § 87(2	2)(b) ar	1d § 87(2)(b)	did not file a Noti	ce of
	incident (encl. 64). <b>[§ 87</b> (2		)] [§ 87(2)(c)]		
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### **Civilian and Officer CCRB Histories**

• PO Cruz has been a member of the NYPD for three years and has been the subject of seven allegations in two prior CCRB cases. In case 201206579, a vehicle search allegation was

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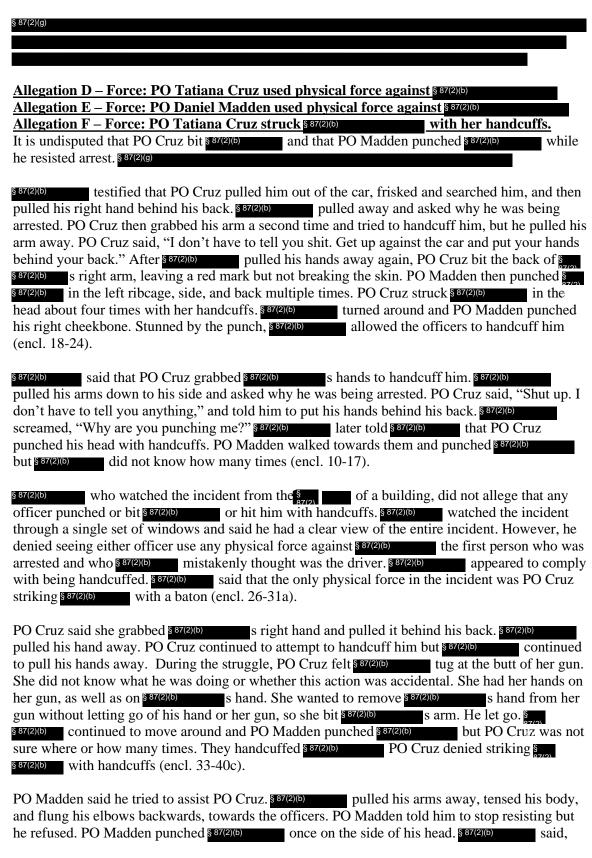
# In case 201205833, an allegation that she punched someone in the face was unsubstantiated. o In case 201206579, an allegation that she pushed someone was unsubstantiated. o In case 201405983, an allegation was made that she struck an individual with a baton and punched the individual. The investigation is ongoing. PO Madden has been a member of the NYPD for three years and has been the subject of five allegations in two prior CCRB cases. § 87(2)(g) This is the first CCRB case involving \$87(2)(b) or \$87(2)(b) (encl. 4-5). **Potential Issues** a § 87(2)(b) who witnessed the incident, provided a brief phone statement, but did not cooperate in providing a sworn statement. **Findings and Recommendations Allegations Not Pleaded** § 87(2)(g) Property damage: §87(2)(b) alleged that PO Cruz broke his watch when she struck him with an asp. The property damage allegation is subsumed in the force allegation. Allegation A – Discourtesy: PO Tatiana Cruz spoke rudely to §87(2)(b) and § 87(2)(g) alleged that PO Cruz said, "Get on the ground, lowlife" and told him and to "shut up" several times (encl. 10-17). \$87(2)(b) alleged that PO Cruz said to "Keep your hands where I can fucking see them," and called him a "smart ass" and a "fucking lowlife." After placing \$87(2)(b) and \$87(2)(b) in the police van, \$87(2)(b) asked why he was being arrested, and PO Cruz replied, "You fucking lowlife. I don't have to answer shit to you...I don't have to listen to this shit. Shut the fuck up" (encl. 18-24). PO Cruz denied calling \$87(2)(b) or \$87(2)(b) a "lowlife" and did not recall using profanity (encl. 33-40c). PO Madden did not hear PO Cruz use profanity or speak discourteously to § 87(2) or § 87(2)(b) (encl. 41-47). § 87(2)(b) and § 87(2)(b) did not allege that the officers used discourteous language but do not appear to have been in a position to hear any conversation between the civilians and officers (encl. 27-31a).

substantiated. The NYPD issued instructions. §87(2)(9)

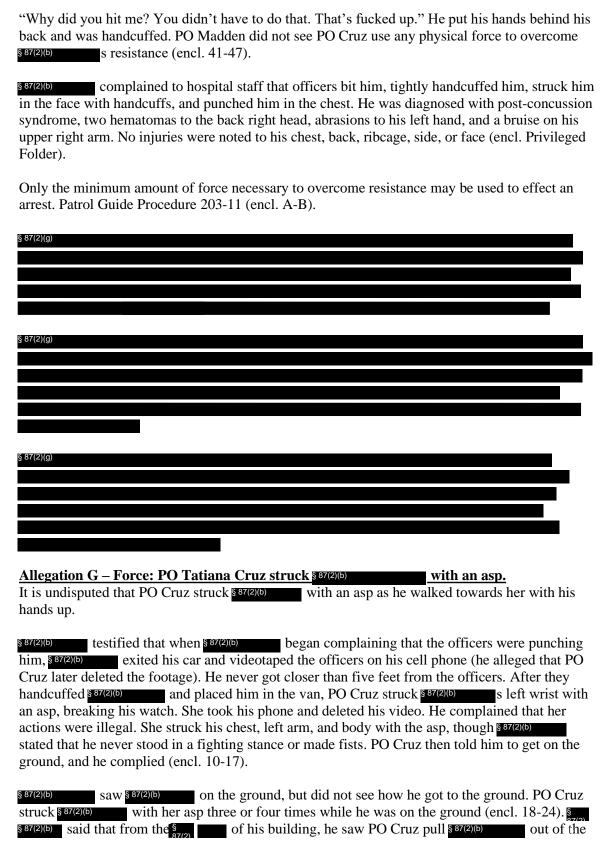
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Allegation B – Abuse of Authority: PO Tatiana Cruz arrested  S87(2)(b)  Allegation C – Abuse of Authority: PO Tatiana Cruz arrested  S87(2)(b)
It is undisputed that there was a small, foldable knife attached to a key chain, hanging from the ignition in \$87(2)(b) s car. \$87(2)(g)
s car. sorens
and \$87(2)(b) and described \$87(2)(b) as knife as a small, foldable knife which requires both hands to open. When closed, the knife is approximately two inches long. At the time of the incident, the knife was new, and was, therefore, slow and sticky to open (encl. 10-24a).
PO Cruz could not recall the size of the knife but believed that it was a gravity knife because it was exactly the same size as a gravity knife she previously encountered. She did not see the locking mechanism and did not know the length of the blade. PO Cruz explained, "Either way, I saw that it was a weapon And that's basically what my probable cause was. I mean, granted I've seen similar knives to that, so I knew, kind of, I had an idea that it may have been a gravity knife." Based on this observation, PO Cruz stated that she had probable cause to arrest him. PO Cruz or PO Madden tested the knife at the stationhouse and confirmed that it was a gravity knife (encl. 33-40c).
PO Cruz noted on the police documents that the knife was a gravity knife. She charged \$ 87(2)(5) and \$ 87(2)(5) each with \$ 87(2)(3) 160.50 (encl. 15; 49-54). [\$ 87(2)(5)]
PO Madden corroborated that they observed a knife, which PO Madden could not describe. He assumed it was a gravity knife based on the arrest reports (encl. 41-47).
An officer may arrest and take into custody a person when the officer has probable cause to believe that person has committed a crime, or offense, in his presence. People v. DeBour, 40 N.Y.2d 201 (1976) (encl. Q-Z1). Custodial arrests should not be made for traffic violations where a summons can be issued instead. People v. Brito, 4 Misc.3d 1004(a) (Crim. Ct. NY Cty. 2004) (encl. L-N).
A person is guilty of criminal possession of a weapon in the fourth degree when he possesses a gravity knife. For an officer to have reasonable suspicion to believe that a person possesses an illegal gravity knife, as opposed to a lawful knife, such as a pocket knife, an officer must possess specific and articulable facts from which he can infer that the defendant is carrying a gravity knife. People v. Vargas, NY Slip Op 8457 (2011) (encl. O-P).
§ 87(2)(g)

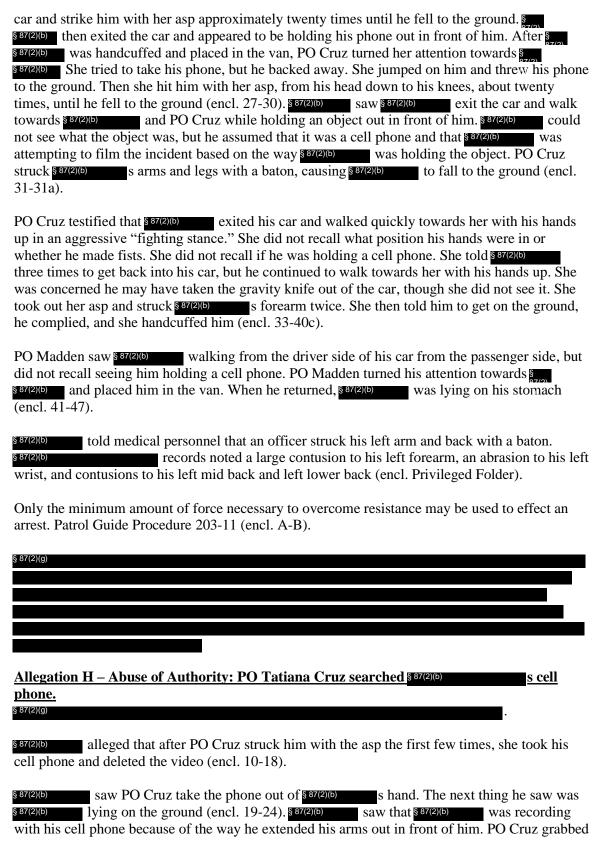
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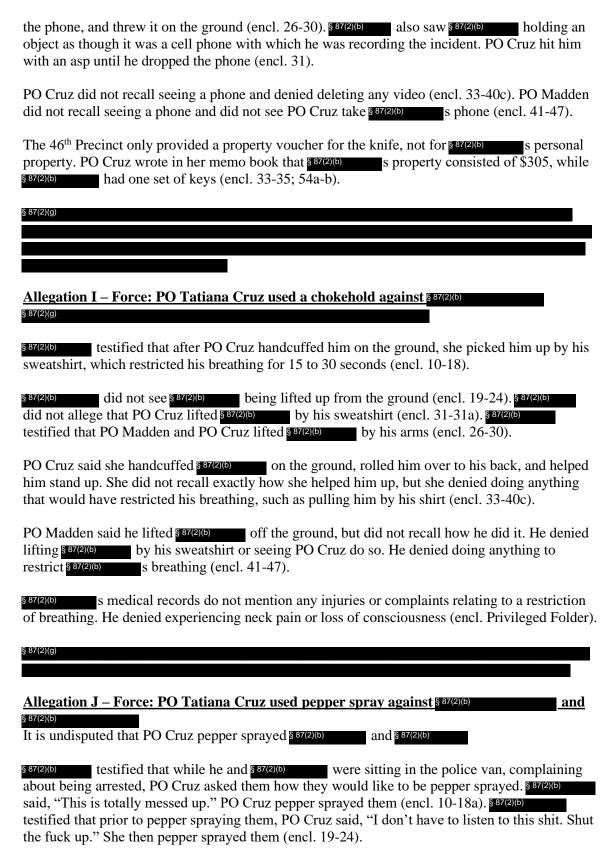


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PO Cruz said that when sericity standing on the passenger side of a door. She told him to stop kicking kick the door open and escape. At while someone was kicking the do at the person closest to the door ar 40c).	the van, § 87(2)(b) g, but they did not sto dditionally, it would por. To make the me	or §87(2)(b) repeatedly kep. PO Cruz did not know if to not have been safe for the offen stop kicking, she aimed the	cicked the hey would ficers to drive pepper spray
PO Madden said that as he sat in t turned around and saw \$87(2)(b) was told to stop. PO Cruz, who was through the open window and pep	or § 87(2)(b) at at as standing outside of	tempting to kick the van door of the van on the passenger side	r. This person de, reached
An officer is justified in the use of necessary to protect him or herself when physical presence and/or verovercoming physical resistance. P 75124/99, signed 12/21/00, the us kicking and screaming. DCT foun spray was not justified under Interest.	f from the unlawful with the front the unlawful with the commands have the latest front of the commands have a front of the control of the co	not been, or would not be effect 212-95 (encl. E-H). DCT of not permitted solely because case guilty, finding that the units of the property o	ny be used fective in Case No. an arrestee is
§ 87(2)(g)			
Team:			
Investigator:Signature	Print	Date	_
Supervisor:			_
Title/Signature	Print	Date	
Reviewer:Title/Signature	Print	Date	_
Reviewer:			
Title/Signature	Print	Date	

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